IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 300 OF 2006

Jairam Dhanasingh Bulabani ... PETITIONER

V/s.

Indian Overseas Bank & ors. ... RESPONDENTS

Mr. N.V. Bandiwadekar for the Petitioner

Mr. P.K. Rele, Sr. Counsel with Mr. V. Tayade & Mr. Piyush Shah for the Respondent Nos. 1 & 2.

CORAM : F.I. REBELLO,
ANOOP V. MOHTA, JJ.

DATED : 14th March, 2006

P.C.

. Rule. By consent of the parties heard forthwith.

2. The petitioner was in the service of Respondent No.1. He submitted his application dated 01.06.2000 for voluntary retirement to be effected from 31.08.2000. On 07.07.2000, petitioner made an application to withdraw his application for voluntary retirement. The petitioner, however, was informed by communication of 14.08.2000 that his application for withdrawal was accepted w.e.f. 31.08.2000.

3. It is not necessary for us to go into

subsequent events including the petition filed before this Court. It appears that petitioner was advised to raise an industrial dispute. Pursuant to an order passed by this Court, Reference was made by the appropriate Government. That reference was decided against the petitioner on the ground that petitioner is not a workman within the meaning of Section 2(s) of I.D. Act and consequently Reference itself came to be rejected. Subsequent to this the Petitioner has filed this present petition.

4. The main contention as urged on behalf of the petitioner is based on the regulation governing voluntary retirement. Regulation 29(4) reads as under :-

"An employee who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with specific approval of such authority".

5. Relying on this regulation, the learned counsel states that his application for withdrawal was made on 07.07.2000. The same was communicated to the competent authority. The order accepting his

voluntary retirement does not disclose that the competent authority applied its mind. The learned counsel submits that as such the order of the competent authority accepting voluntary retirement should be set-aside. Reliance for that purpose is placed on the judgment of the Appex Court in the case of Balram Gupta V/s. Union of India and another, AIR 1987 Supreme Court 2354. A similar regulation was under consideration before the Apex Court. It is not necessary to go into facts of that case. Suffice it to say that the Apex Court was pleased to hold in that case that Appellant before the Apex Court had applied for voluntary retirement. He applied for withdrawal on the same date when he was due to retire. That was not allowed. The Apex Court noted that considering change of circumstances if appellant before it withdraws notice, the competent authority was bound to acknowledge the same and allow the appellant to withdraw the application.

6. The learned Counsel for the respondents, however draws my attention to communication dated 31.08.2000 addressed by the petitioner to the Trustee of P.F. & Gratuity Funds, wherein petitioner requested the parties to kindly settle and arrange to pay his P.F. and Gratuity Fund as per rules. The

petitioner also authorised the trustee to adjust from his benefit, the dues payable to Bank. Based on that the learned counsel points out that petitioner is now estopped from contending that the action of the respondents in accepting the application for voluntary retirement was in contravention of the regulation.

7. Having considered the arguments and contentions, we are of the opinion that the petitioner, after communication dated 31.08.2000 is barred now from contending before this Court that there was non application of mind on the part of the respondent. We could have accepted the contention if the petitioner had accepted the benefits under protest after he was issued the communication accepting his voluntary retirement. The petitioner instead of protesting against acceptance of his voluntary retirement accepted the voluntary retirement and authorised the competent officer to adjust his dues from the benefit payable.

8. Considering the above, this is not fit case to exercise our ex-traordinary jurisdiction. Petition is accordingly dismissed.

9. Rule discharged.

[F.I. REBELLO,J.]

[ANOOP V. MOHTA, J.]